

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 621 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BAHADURSINH N CHUDASAMA

Versus

GANESHBHAI JIVABHAI

Appearance:

MR TUSHAR MEHTA FOR MR. KG VAKHARIA for Appellant

MR NAGIN N GANDHI for Respondent No. 1

MR KT DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/03/98

ORAL CAV JUDGEMENT

This appeal is preferred under Sec.378 of the Code of Criminal Procedure, 1973 against the judgment passed by the 1d. Judicial Magistrate (First Class) at Dhandhuka on 30.6.1990 who has acquitted the accused - respondent no.1 of the offence punishable under Sec.36(2) of the Gujarat Agriculture Market Act, 1963 (hereinafter referred to as the Act).

Mr. Tushar Mehta, ld. Advocate appearing for the appellant has pointed out that whoever violates the provisions of Sec.8 of the Act, can be punished for the offence punishable under Sec. 36(2)(ii) of the Act. Ld. Advocate Mr. Tushar Mehta for ld. Advocate Mr. K.G. Vakharia has submitted that Rule 59 of the Gujarat Agricultural Produce Market Committee Rules (hereinafter referred to as the Rules) is relevant. Respondent no.1-accused was served with notice and in view of Rule 59, he was obliged to respond the same. It is not a matter of dispute that the complainant, at the relevant time, was Inspector of Agricultural Produce Market Committee, Dhandhuka. The committee was authorised to inspect books of accounts of respondent no.1 with a view to assess the fees payable to the committee by the trader trading in the market yard. On the complaint of the appellant, a criminal case was registered in the Court of Ld. Judicial Magistrate (F.C.). According to Mr. Mehta, ld. Advocate for the appellant, though there was satisfactory documentary evidence, the ld. Magistrate has erred in acquitting the accused.

Mr. N.N.Gandhi, ld. Advocate appearing for respondent no.1- original accused, has submitted that Sec. 36(2) of the Act would not be attracted in this case as accused was already holding a licence for trading within the limits of the market yard of APMC, Dhandhuka. the next submission of ld. Advocate Mr. Gandhi is that the prosecution has failed in proving that the accused had ever traded in the market yard after obtaining a licence. Ld. Magistrate has rightly held that the prosecution has failed to prove that respondent no.1 - accused had traded in the market yard during the alleged period which is reflected in the notice issued by the APMC, Dhandhuka.

The language of Sec.36(2) of the Act is quite clear and hence, submission of ld. Advocate Mr. Gandhi is not accepted that the provisions as aforesaid of the Act would not be applicable even if the allegations made in the complaint are accepted to be true. It is averred by the complainant that condition No.8 of the licence granted to the original accused - respondent no.1 is violated and, therefore, the same amounts to breach of Rule 59 of the rules. The language of Sec.36(2)(ii) of the Act indicates that violation or breach of any rule is punishable under the provisions of the Act. Non-production of a licence goes to the root of this case. However, the Court cannot assume or presume anything in favour of the prosecution unless it is provided by the Statute. Ld. Magistrate has rightly

held that the prosecution has failed to prove trading by the accused within the limits of market yard area. Mr. Tushar Mehta, ld. Advocate for the appellant has submitted that this could be proved only on the basis of the books of accounts and the original accused had failed to produce the same in the office of the APMC. However, it was possible for the prosecution to establish trading by the original accused by producing other evidence such as books of accounts of other traders from whom the accused might have purchased goods or to whom the accused might have sold the goods. Prosecution could have examined even farmers or traders or brokers who bring agricultural produce within the market yard area for sale to prove that the accused was trading within the market yard area during the period for which he was served with the notice by the Committee. According to the prosecution, the accused has failed in producing his books of accounts of the year 1984-85 corresponding S.Y. 2040-2041. Non-production of books of accounts in the office of the APMC amounts to breach of condition No.8 of the licence. It is the case of the prosecution that the accused was served with a notice to produce books of accounts on 27.2.1986. The said notice is at exh.25. the postal acknowledgement receipt of service of the said notice is at exh.27. However, on going through the record of the trial Court, it transpires that prior to the notice dated 27.2.1986 at exh.25, the accused was served with other notices which are at exh.22 & 23. Notice exh.22 is the certified copy of the notice signed and sent by the Inspector, APMC, Dhandhuka bearing No. MSR-A317-620 dated 2.9.1985. Notice exh.23 is dated 29.10.1985. In both these notices, it is mentioned that non-compliance of the notice would incur legal consequence. The language of the notice dated 23.10.1985 is relevant which reads as under :- (Original in Gujarati, translated in to English)

" If you fail to comply with the notice issued by the Market Committee within the stipulated time limit, Market Committee, Dhandhuka would be left with no alternative and would be compelled to initiate legal proceedings against you for the breach/violation of Rule 59 of the Market Act, sec.44 of the Byelaws and condition no.8 of the licence and you would be responsible for whatever consequences /liabilities flowing therefrom and please take serious note thereof."

When a query was put by the Court to the ld. Advocate Mr. Tushar Mehta whether the accused can be

said to be prosecuted within the prescribed period of limitation in view of the notice exh.23 and in view of the provisions of Sec.468 of the Code of Criminal Procedure, 1973, Mr. Mehta responded to the query by replying that the date of notice exh.25 is relevant and not the date of notice exsh.23. However, in view of the notices at exh. 23 & 25, in my opinion, the time would start running from the date of first demand of the production of the books of accounts before the office of the APMC in view of the provisions of Rule 59 of the Rules. The offence is punishable only with a fine. It is not the case of the prosecution that the alleged offence committed by the accused-respondent no.1 is the second offence. Prescribed period of limitation runs from the date of first demand. Ld. Advocate Mr. Mehta has submitted that the point of limitation was not agitated before the trial Court, but this submission is not accepted. It is the duty of the Court to scrutinise facts available on record and when it is apparent that on 29.3.1986, the date on which a complaint was filed before the ld. JMfC, Dhandhuka, was time barred and the ld. Magistrate even ought not to have registered the offence. This Court cannot ignore this fact. Thus, on all the three main counts viz. (i) limitation, (ii) nonproduction of the licence granted, and (iii) offence of proof as to trading by the accused in the year 1984-85 in the market yard area, the accused cannot be held guilty and convicted. I am in agreement with the view taken and reasons given by the ld. Magistrate while acquitting the accused. It is, therefore, not necessary to discuss the evidence in detail in view of the observations made by the Honourable Supreme Court in the case of State of Karnataka v/s Hemareddy, reported in AIR 1981 SC 1417, which reads as under :-

"... This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudhry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court, expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

Hence, appeal fails and is dismissed. The impugned order of acquittal passed by the ld. Magistrate is hereby confirmed.

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